

Memorandum 2014-2

2014 Legislative Program (Status Report)

The staff expects that bills will be introduced in 2014 to implement the following Commission recommendations:¹

- *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, 43 Cal. L. Revision Comm'n Reports ____ (2013).
- *Technical and Minor Substantive Statutory Corrections*, 43 Cal. L. Revision Comm'n Reports ____ (2013).
- *Deadly Weapons: Minor Clean-Up Issues*, 43 Cal. L. Revision Comm'n Reports ____ (2013).

In addition, the staff is looking for an author to introduce a concurrent resolution to reiterate the "calendar of topics" that the Commission is authorized to study (pursuant to Government Code Section 8293).

Further information is provided below.

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

Senator Hannah-Beth Jackson has agreed to author a bill to implement the Commission's recommendation. A bill draft is being prepared, but has not yet been introduced.

In the process of preparing the bill draft, the Office of Legislative Counsel noted a fairly significant procedural complication. That complication, and the steps taken to remedy it, are discussed below.

Registration Fee

The proposed law would specify a \$30 fee for filing papers to register an out-of-state conservatorship in California.² When the fee provision was first drafted,

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See proposed Gov't Code § 70663.

it was located in an existing provision that collects various fees.³ With that placement, the new fee would have been subject to a special revenue allocation rule:

From July 1, 2011, to June 30, 2017, inclusive, ten dollars (\$10) of each fee collected pursuant to subdivisions (a) and (b) shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation pilot program under Section 68651.⁴

The Commission later decided to place the fee provision in a stand-alone section, so that it could be located together with other probate fees. In doing so, we included the special revenue allocation rule.⁵

The Office of Legislative Counsel has informed us that the special revenue allocation rule would be considered a “tax” under Proposition 26, because the civil representation pilot project is unrelated to the court service provided (conservatorship registration). If that allocation rule is included in the bill, the entire bill will be subject to a two-thirds supermajority approval requirement in the Legislature.

While we are not currently anticipating opposition to the proposed law, a two-thirds approval requirement is a significant procedural burden that could conceivably lead to defeat of the measure. **Given how incidental the revenue allocation rule is to the proposal as a whole, the staff recommends that it be removed.** The Commission did not expressly consider the merits of the special revenue allocation rule, which is not necessary to effectuate UAGPPJA. Had the staff known that the special revenue rule would trigger the two-thirds vote requirement, we would never have recommended its inclusion in the proposed law.

Procedural Posture

Under our existing practices, the Executive Director (or a staff member, acting pursuant to authority delegated by the Executive Director) may approve the amendment of a Commission-recommended bill when the amendment is a “technical or nonpolicy amendment” or “where the failure to make the amendment would jeopardize the enactment of the bill.”⁶ When acting under

3. Gov’t Code § 70626(b).

4. Gov’t Code § 70626(e); 2012 Cal. Stat. Ch. 4, § 45.

5. See proposed Gov’t Code § 70663(b).

6. Handbook of Practices & Procedures, Rules 3.3, 8.1.

that authority, the Executive Director (or staff member) is to seek Commission guidance to the extent practicable:

If possible, the staff should submit the amendments to the members of the Commission in advance of making the amendments, either at a meeting or by distribution of a draft of the amendments to each member of the Commission. If this is not possible, the amendments made to the bill should be presented to the Commission, at the first opportunity, for review and approval or for revision. In addition, whenever possible, an amendment that involves a policy decision of the Commission should be discussed with the Chairperson by telephone or email before being made.⁷

In this case, the proposed amendment is needed to avoid a procedural complication that could jeopardize enactment of the bill, so it would fall within the ambit of the rule. The timing of the bill drafting and introduction process weighed against delaying a decision on the matter until after the Commission's meeting on February 6, 2014.

For that reason, the staff discussed the proposed amendment with the Chair, rather than seeking the prior approval from the full Commission. With the understanding that the matter would be presented to the Commission for ratification at the February meeting, the Chair agreed that the amendment should be made.

The staff then consulted with Senator Jackson's staff, to inform them of the issue and see whether they had any concerns about removing the problematic revenue allocation provision. They had no concerns.

The staff instructed the Office of Legislative Counsel to delete the provision.

The staff recommends that the Commission ratify that action and make a parallel change to its recommendation, thus:

70663. ~~(a)~~ The fee for registering a conservatorship under Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code is thirty dollars (\$30). ~~Subject to subdivision (b), amounts~~ Amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

~~(b) From the operative date of this section to June 30, 2017, inclusive, ten dollars (\$10) of each fee collected pursuant to subdivision (b) shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation pilot program under Section 68651.~~

7. *Id.*

No change to the Comment to Section 70663 would be required.

TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS

The staff has requested that the proposed technical clean-up legislation be included in the civil omnibus bill that will be introduced by the Assembly Committee on the Judiciary. That request is being reviewed by the Committee.

DEADLY WEAPONS: MINOR CLEAN-UP ISSUES

The staff has requested that the proposed deadly weapons clean-up legislation be introduced as a committee bill by the Assembly Public Safety Committee. That request is being reviewed by the Committee.

Respectfully submitted,

Brian Hebert
Executive Director